

REMARKS

Overview

The Examiner responded in the prior Office Action as follows: rejected claims 1-2 and 4-6 under 35 U.S.C. § 102(a) as being anticipated by Greamo et al. (U.S. Patent Application No. 2002/0095307); rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Greamo; rejected claims 7-44, 46-67, 70, 72-98 and 100-101 under 35 U.S.C. § 103(a) as being unpatentable over Greamo in view of Jenkins et al. (U.S. Patent Application No. 2002/0188499); and rejected claims 45, 68-69, 71 and 99 under 35 U.S.C. § 103(a) as being unpatentable over Greamo in view of Jenkins and further in view of Dunston (U.S. Patent Application No. 2002/0082954).

Applicants traverse these rejections, as discussed in greater detail below, and thus claims 1-101 remain pending.

Analysis

The Examiner has rejected each of the previously pending claims as being unpatentable over Greamo, either alone or in combination with other references. However, the Greamo reference relied upon by the Examiner is not prior art for this application, and thus these rejections are moot. Accordingly, each of the pending claims as rejected is allowable over the prior art of record.

In particular, the Greamo published patent application on which the Examiner relies was filed on October 29, 2001, which is subsequent to the filing of the pending application on September 27, 2001. Accordingly, Greamo does not qualify as prior art and thus cannot be used as a basis for rejecting any of the claims of the current application, unless Greamo finds support for the relied-upon disclosure in a prior application to which Greamo claims priority. While Greamo does claim priority to provisional U.S. Application No. 60/243,400 filed on October 27, 2000, this provisional patent application appears to lack support for the disclosure of Greamo relied upon by the Examiner, and thus the provisional patent application cannot serve to render Greamo as effective prior art. In particular, as M.P.E.P. 2136.03 makes clear, a U.S. patent application or patent gains the benefit of the filing date of an earlier-filed U.S. provisional

patent application for prior art purposes **only** “if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.” (MPEP 2136.03[III], emphasis in original.) In this case, the provisional application appears to consist only of a few pages of background description and copies of various functional specifications. Applicants have reviewed the disclosure of the provisional application with respect to each of the portions of Greamo cited by the Examiner (including Greamo paragraphs 21, 22, 24, 25, 27, 32, 41, 43, 48, 49, and 60; Greamo claims 2 and 49; and the cited portions of Greamo Figures 1 and 2), and fail to find support for any of those disclosures in the provisional application.

Accordingly, since Greamo is not effective prior art, the Examiner has failed to establish a prima facie case of unpatentability of any of the pending claims, and pending claims 1-101 are allowable over the cited prior art of record. If the Examiner maintains any future rejection based on Greamo, Applicants request that the Examiner identify with specificity the sections of the provisional application that support the rejection. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

In a similar manner, the Jenkins reference relied upon by the Examiner is also not prior art for the pending application, and thus claims 7-101 are further patentable over the cited prior art for this reason as well. In particular, the Jenkins published patent application on which the Examiner relies was filed on October 29, 2001, which is subsequent to the filing of the pending application on September 27, 2001. While, Jenkins similarly claims priority to an earlier-filed provisional patent application (that being provisional U.S. Application No. 60/243,400 filed on October 27, 2000), this provisional patent application appears to similarly lack support for the disclosure of Jenkins relied upon by the Examiner, and thus the provisional patent application cannot serve to render Jenkins as effective prior art.

In addition, Applicants note that the Examiner has relied on numerous Official Notices in rejecting various of the pending claims in combination with Greamo and Jenkins. Since these rejections have been mooted for the reasons discussed above, the bases for these Official Notices have not been discussed in detail herein. However, if the Examiner maintains any such Official Notices in a subsequent Action, Applicants reserve the right to address such Official Notices at that time, including requesting that the Examiner cite references in support of his/her position

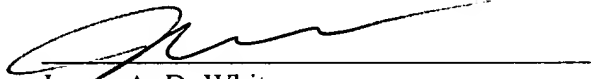
pursuant to M.P.E.P. 2144.03 and the PTO's memo on "Procedures for Relying on Facts Which are Not of Record as Common Knowledge or for Taking Official Notice" dated February 21, 2002.

Conclusion

In light of the above remarks, Applicants respectfully submit that all of the pending claims are allowable. Applicants therefore respectfully request the Examiner to reconsider this application and timely allow all pending claims.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
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